

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID RAY WILLIAMS,

Plaintiff,

No. CIV S-04-2559 LKK KJM P

vs.

CSP SOLANO, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief under 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 under 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee in effect at the time of filing of his action, \$150.00. 28 U.S.C. § 1914(a), 1915(b)(1). Plaintiff has been without funds for six months and is currently without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments shall be collected and forwarded by the appropriate agency to the Clerk of the Court

1 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28
2 U.S.C.
3 § 1915(b)(2).

4 Plaintiff's complaint states a cognizable claim for relief under 42 U.S.C. § 1983
5 and 28 U.S.C. § 1915A(b). If the allegations of the complaint are proven, plaintiff has a
6 reasonable opportunity to prevail on the merits of his Eighth Amendment claims against
7 defendants Parker, Roher and Solomon. The court will order service of process upon those
8 defendants.

9 Plaintiff has requested the appointment of counsel. The United States Supreme
10 Court has ruled that district courts lack authority to require counsel to represent indigent
11 prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In
12 certain exceptional circumstances, the court may request the voluntary assistance of counsel
13 under 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.
14 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court does not
15 find the required exceptional circumstances. Plaintiff's request for the appointment of counsel
16 will therefore be denied.

17 In accordance with the above, IT IS HEREBY ORDERED that:

18 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

19 2. Plaintiff is obligated to pay the statutory filing fee of \$150.00 for this action.

20 The fee shall be collected and paid in accordance with this court's order to the Director of the
21 California Department of Corrections filed concurrently herewith.

22 3. Service is appropriate for the following defendants: Parker, Roher and
23 Solomon

24 4. The Clerk of the Court shall send plaintiff three USM-285 forms, one
25 summons, an instruction sheet and a copy of the complaint filed December 2, 2004.

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1 5. Within thirty days from the date of this order, plaintiff shall complete the
2 attached Notice of Submission of Documents and submit the following documents to the court:

- 3 a. The completed Notice of Submission of Documents;
4 b. One completed summons;
5 c. One completed USM-285 form for each defendant listed in number 3
6 above; and
7 d. Four copies of the endorsed complaint filed December 3, 2004.

8 6. Plaintiff need not attempt service on defendants and need not request waiver of
9 service. Upon receipt of the above-described documents, the court will direct the United States
10 Marshal to serve the above-named defendants under Federal Rule of Civil Procedure 4 without
11 payment of costs.

12 7. Plaintiff's December 30, 2004 request for the appointment of counsel is
13 denied.

14 DATED: May 18, 2005.

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17 UNITED STATES MAGISTRATE JUDGE
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NOTICE OF SUBMISSION
OF DOCUMENTS

_____/

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

_____ completed summons form

_____ completed USM-285 forms

_____ copies of the _____
Complaint

DATED:

Plaintiff